

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1298 of 2007

JUDGMENT:

Petitioner/accused filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 21.09.2007, rendered in CrI.A.No.118 of 2006 by the II Additional Sessions Judge, at Warangal, whereby and whereunder the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of seven (7) years and to pay a fine of Rs.100/-, in default to suffer Simple Imprisonment for a period of ten (10) days for the offence punishable under Section 304-B IPC recorded in judgment, dated 08.10.2006, in S.C.No.66 of 2004, by the Principal Assistant Sessions Judge, at Warangal, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

P.Ws.1 and 2 are the parents of the deceased Swathi. Fifteen months prior to the date of the incident i.e., 11.03.2002, P.Ws.1 and 2 have performed the marriage of the deceased with the accused and at the time of marriage, on demand made by the accused, P.W.1 agreed to give a dowry of Rs.60,000/-. At the time of marriage, P.W.1 paid Rs.30,000/- cash and also presented household articles and promised to pay the remaining dowry amount of Rs.30,000/- within one year from the date of marriage. Soon after the marriage, the deceased joined the society of the accused and led happy marital life for few days. Thereafter, the accused started harassing the deceased by making unlawful

demand for the remaining dowry amount of Rs.30,000/-. P.W.1 summoned the accused and gave his one acre of land to the accused in the presence of elders by executing an agreement. After few days, the deceased again started harassing the deceased demanding her to bring additional dowry of Rs.30,000/- from her parents. The accused used to beat the deceased frequently by making unlawful demand for the remaining dowry amount.

On 10.03.2002, the deceased made a phone call to the neighbour of her parents and informed her mother P.W.2 that the accused beat her and demanded for balance dowry amount and the accused further threatened her that he would not send her to her parents' house for Shivarathri festival. In view of the physical and mental harassment subjected by her in the hands of the accused, the deceased decided to put an end to her life. On 11.03.2002 at 8.00 a.m., the deceased went to the agricultural well and consumed pesticide poison in order to commit suicide and returned to her house and was suffering due to action of poison. On coming to know about the same, One V. Babu Rao, visited the house of the accused and shifted her to the hospital of P.W.3, who is an RMP doctor & private medical practitioner at Girnibhavi Village. P.W.3 provided first aid to the deceased and advised to shift her to MGM Hospital for expert treatment. While undergoing treatment, the deceased died in MGM Hospital on 11.03.2002 at about 11.00 a.m. P.W.4, who is the neighbour of the parents of the deceased received a telephone call from Mandapally about the incident and passed on the said information to the parents of the deceased. Thereupon, the parents of the deceased came to the hospital and found the dead body of the deceased.

On 12.03.2002 at 8.00 a.m., P.W.1 lodged Ex.P-1 – written complaint before the Sub-Inspector of Police, Duggondi Police Station (P.W.9), who in turn registered a case in Crime No.24 of 2002 for the offence punishable under Section 304-B IPC. On 12.03.2002, P.W.6 held inquest over the dead body of the deceased in the presence of P.W.5 and one A. Rama and thereafter, P.W.9 got photographed the dead body of the deceased, recorded the statements of the witnesses and referred the dead body to the Medical Officer. Dr. Udayapal Singh conducted Post Mortem Examination over the dead body of the deceased and issued Ex.P-6 – Post Mortem Examination report by preserving the viscera of the deceased for forwarding the same to FSL, Hyderabad. Thereafter, the SDPO, Narsampet took up the investigation, visited the scene of offence, examined the witnesses and he received the final opinion – Ex.P-7, wherein it is mentioned that the death of the deceased is due to “organophosphate, an insecticide poison” found in the viscera contents. On 09.04.2002, the accused was surrendered before the Court and on completion of the investigation, the police has filed the charge sheet against the accused.

3. On appearance of the accused before the trial Court, the charges under Sections 304-B & 498-A IPC and also Sections 3 & 4 of the Dowry Prohibition Act were framed against the accused, read over and explained to him, for which, he pleaded not guilty and claimed for trial.

4. To substantiate its case, prosecution got examined PWs.1 to 10 and marked Exs.P-1 to P-7. On behalf of defence, no witness was examined but Exs.D-1 & D-2 were marked.

5. After appreciating the oral and documentary evidence available on record and placing reliance on the evidence of P.Ws.1, 2 & 5, the trial Court found the accused guilty of the offence punishable under Section 304-B IPC and accordingly, convicted and sentenced him as stated above. Aggrieved by the conviction order, the petitioner/accused filed Crl.A.No.118 of 2006. The lower appellate Court dismissed the appeal by confirming the order of the trial Court, by judgment, dated 21.09.2007. Challenging the same, the present revision case is filed.

6. Heard and perused the entire material available on record.

7. The evidence of P.Ws.1 and 2 is that the deceased suffered in the hands of the petitioner/accused in connection with the demand of additional dowry of Rs.30,000/-. The said evidence is self-contradictory and contradict with each other. According to the evidence of P.W.1, a call was made by the deceased 20 days prior to Shivarathri, whereas P.W.2 states that a call was made only prior to Shivarathri and further stated that the deceased informed her that she was subjected to harassment in the hands of the accused. Even taking into consideration the entire evidence adduced by way of P.Ws.1 & 2 as true also, the said evidence does not disclose the nature of ill-treatment which necessitated them to come to a conclusion that the deceased was harassed in connection with the demand of dowry. Further, the deceased has also not committed suicide in the matrimonial home, but she went to the agricultural field and consumed pesticide and succumbed to the said consumption of pesticide in the hospital. The said evidence adduced by the prosecution clinchingly does not establish

the case of the prosecution to attract an offence under Section 304-B IPC, but at the same time, the evidence on record would show the behaviour of the accused to drive her to commit suicide, which squarely falls under Section 498-A IPC. Hence, this Court is of the view that the conviction under Section 304-B IPC can be set aside and he can be safely convicted for the offence under Section 498-A IPC.

8. In the result, the conviction and sentence imposed against the petitioner/accused by the trial Court for the offence punishable under Section 304-B IPC, as confirmed by the lower appellate Court, is set aside. However, the petitioner/accused is found guilty for the offence punishable under Section 498-A IPC and accordingly, convicted for the said offence. However, the sentence of imprisonment is given set off to the period already undergone by the petitioner/accused. However, the petitioner/accused is directed to pay a fine of Rs.25,000/- (Rupees twenty five thousand only) and the same shall be given to the complainant (P.W.1) as compensation. In default of payment of fine amount, the petitioner/accused shall undergo Rigorous Imprisonment for a period of six (6) months.

9. The Criminal Revision Case is, accordingly, allowed in part. Consequently, the Miscellaneous Petitions, if any, pending in the criminal revision case shall stand closed.

RAJA ELANGO, J

Date: 23rd September, 2016

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